

HOUSE BILL NO. 601

INTRODUCED BY G. FORRESTER

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE MINING THRESHOLD LIMIT FOR PERSONS WHO ARE REQUIRED TO OBTAIN AN OPENCUT-MINING PERMIT; PROVIDING THAT PUBLIC SAFETY IS A CONSIDERATION FOR THE APPROVAL OF A RECLAMATION PLAN; AMENDING SECTIONS 82-4-431 AND 82-4-434, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-4-431, MCA, is amended to read:

"82-4-431. Permit for reclamation required. (1) An operator may not conduct opencut-mining operations that result in the removal of a total of 10,000 cubic yards or more of materials and overburden until the department has issued a permit to the operator for the reclamation of the land affected. A person may not, without a permit, remove materials from a site from which a total of 10,000 cubic yards or more of materials and overburden ~~has been~~ have been previously removed. An operator ~~conducting a number of operations, each of which results in the removal of less than 10,000 cubic yards of materials and overburden but that result in the removal of 10,000 cubic yards or more of materials and overburden in the aggregate,~~ is subject to the provisions of this part, except as provided in this section.

(2) Except as provided in or conditioned under subsections (3) and (4), an operator who holds a permit for reclamation may operate an opencut mine without first securing an additional permit or an amendment to the existing permit or bond if the mine meets the following criteria:

(a) the total amount of materials and overburden removed does not exceed 2,500 cubic yards; and

(b) the operator notifies the department prior to beginning operations and, within 30 days of notifying the department, submits a completed site information form, salvages and stockpiles all root-bearing soil materials, regrades the affected area to 3:1 or flatter slope and blends the reclaimed area into the adjacent topography, and during the first appropriate growing season, replaces all topsoil and reseeds or revegetates as required by the department.

(3) The department may refuse to approve an application for issuance of a permit under subsection

(1) or allow the operator to operate an opencut mine under subsections (1) and (2) if, at the time of notification by the operator to the department, the operator has a pattern of violations or is in current violation of this part, rules adopted under this part, or provisions of a permit for reclamation.

(4) The department may require an additional bond as a condition for the operation of an opencut mine under subsection (2).

(5) Opencut mines described in subsection (2) may not be placed:

(a) in flowing, ephemeral, or intermittent streams;

(b) in the bottom or head of a confined drainage;

(c) in an area where the operation will intercept ground water or intercept any slope that is naturally steeper than 3:1; or

(d) in any area where mining would be restricted by other laws.

(6) Sand and gravel opencut mines must meet applicable local zoning regulations adopted under Title 76, chapter 2."

Section 2. Section 82-4-434, MCA, is amended to read:

"82-4-434. Reclamation plan part of permit -- requirements. The reclamation plan must meet the following requirements:

(1) The department shall submit each reclamation plan or amendments to the reclamation plan to the landowner for recommendations and shall consider those recommendations in deciding whether to approve or disapprove any plan or amendments. The department may seek technical help from any state or federal agency. The department shall submit the plan immediately to the state historic preservation office for evaluation of possible archaeological or historical values in the area to be mined. The department may approve a reclamation plan only if the department has found that the plan provides for the best possible reclamation under the circumstances at the time, so that after mining operations are completed, the affected land will be reclaimed to a productive use. Once the reclamation plan is accepted in writing by the department, it must become a part of the permit but is subject to annual review and modification by the department.

(2) The department may not approve a reclamation plan or a plan of operations unless the plans provide:

(a) that the land will be reclaimed for one or more specified uses, including but not limited to

1 forest, pasture, orchard, cropland, residence, recreation, industry, and habitat for wildlife, including food,
2 cover, or water, or other uses;

3 (b) that to the extent reasonable and practicable, the operator will establish vegetative cover
4 commensurate with the proposed land use;

5 (c) whenever operations result in a need to prevent acid drainage or sedimentation on or in
6 adjoining lands or streams, for the construction of earth dams or other reasonable devices to control water
7 drainage, provided the formation of the impoundments or devices will not interfere with other landowners'
8 rights or contribute to water pollution;

9 (d) that to accomplish practical utilization of soil materials, the material will be salvaged and
10 utilized for placement on affected areas, if required by the reclamation plan after completion or termination
11 of that particular phase of the mining operations, at a depth sufficient for plant growth on slopes of 3:1
12 or less. The depth of soil materials to be placed on the reclaimed area must be specified in the plan.

13 (e) that grading will be commensurate with the topography sought and land use designated;

14 (f) that metal and other waste will be removed or buried;

15 (g) that all access, haul, and other support roads will be located, constructed, and maintained in
16 such a manner as to control and minimize channeling and other erosion;

17 (h) that the operator will submit a progress report annually to the department;

18 (i) that all operations will be conducted to avoid range and forest fires and spontaneous
19 combustion and that open burning of carbonaceous materials will be in accordance with suitable practices
20 for fire prevention and control;

21 (j) that archaeological and historical values in areas to be mined will be given appropriate
22 protection;

23 (k) that except for those postmine land uses that do not require vegetation, each surface area of
24 the mined premises that will be disturbed will be revegetated when its use for extractive purposes is no
25 longer required;

26 (l) that seeding and planting will be done in a manner to achieve a permanent vegetative cover that
27 is suitable for the postmine land use and that retards erosion and that all seed will be drilled unless
28 otherwise provided in the plan;

29 (m) that reclamation will be as concurrent with mining operations as feasible and will be completed
30 within a specified length of time;

(n) that surface water and ground water will be given appropriate protection, consistent with state law, from deterioration of water quality and quantity that may arise as a result of the operation;

(o) that noise and visual impacts on residential areas will be minimized to the degree practicable through berms, vegetation screens, and reasonable limits on hours of operation; ~~and~~

(p) that threats to public safety are minimized through the use of adequate traffic control measures and sufficient provisions for access; and

~~(p)(q)~~ that any additional procedures that are necessary, consistent with the purposes of this part, to prevent significant physical harm to the affected land or adjacent land, structures, improvements, or life forms will be implemented.

(3) If reclamation according to the plan has not been completed in the time specified, the department after 30 days' written notice shall order the operator to cease mining and, if the operator does not cease, may issue an order to reclaim, a notice of violation, or an order of abatement or may institute an action to enjoin further operation and may sue for damages for breach of the conditions of the permit, for payment of the performance bond, or for both.

(4) (a) At any time during the term of the permit, the operator may for good reason submit to the department a new reclamation plan or amendments to the existing plan, including extensions of time.

(b) The department may approve the proposed new reclamation plan or amendments to the existing plan if:

(i) the operator has in good faith carried on reclamation according to the existing plan and the proposed new plan or amendments to the existing plan will result in reclamation as or more desirable than the reclamation proposed under the existing plan; or

(ii) it is highly improbable reclamation will be successful unless the existing plan is replaced or amended.

(c) When accepted, the proposed new reclamation plan or the proposed amendments to the existing plan become a part of the permit.

(5) The operator shall provide a performance bond or an alternative acceptable to the department in an amount commensurate with the estimated cost of reclamation, but in no case may the bond be less than \$200 an acre. The estimated cost of reclamation must be set forth in the reclamation plan.

(6) The permit, reclamation plan, and amendments accepted by the department are a public record and are open to inspection.

1 (7) The permit is effective when signed by the department and the operator and remains in force
2 until terminated by mutual consent or by the department upon 6 months' notice."

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4 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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